FILED
JUL 13 1956
JOHN T. FEY, Clerk

In the

Supreme Court of the United States

October Term, 1956

No. 249

BRITISH TRANSPORT COMMISSION, ET AL.,
Petitioners

v.

UNITED STATES OF AMERICA, ETC.,
Respondent

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

JOHN W. OAST, JR.
Citizens Bank Building
Norfolk, Virginia

WILBUR E. DOW, JR.
70 Pine Street
New York, New York

Proctors for Petitioners

TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Statement	3
Reasons for Allowance of the Writ	5
Conclusion	13
Appendix:	
A. Opinion of District Court	App. 1
B. Decision of Court of Appeals for the Fourth Circuit	App. 10

TABLE OF CITATIONS

Cases

Johnston-Warren Lines v. United States, 196 F. 2d 689	10, 12
Lie v. San Francisco and Portland SS Co., 243 U. S. 291	10, 11
Nelson v. Leland, 63 U. S. 50	6
The Oregon, 158 U. S. 192	6
Pfester v. Greening, 76 U. S. 510	6
The Silver Palm, 94 F. 2d 754	10, 12
The T. J. Hooper, 60 F. 2d 737	9
The Umbria, 166 U. S. 404	11
United States v. The Australia Star, 74 F. Supp. 145, aff. 172 F. 2d 472	8

Statutes

Articles 16 and 29. Regulations for Preventing Collisions at Sea, 26 Stat. 326, 328	3

In the

Supreme Court of the United States

October Term, 1956

No. .....

BRITISH TRANSPORT COMMISSION, ET AL.,
Petitioners

v.

UNITED STATES OF AMERICA, ETC.,
Respondent

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

Petitioners herein, Arther Goodman, et al., respectfully pray that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered on February 13, 1956, which affirmed that part of the judgment of the United States District Court for the Eastern District of Virginia, exonerating the United States of America as owner of the U.S.N.S. *Haiti Victory* for all damages caused by collision with the S.S. *Duke of York*.

THE OPINIONS OF THE COURTS BELOW

The opinion of the District Court for the Eastern District of Virginia, Norfolk Division, is printed in the appendix

hereto and also annexed to the record of the Court below and is reported in 131 F. Supp. 712.

The opinion of the Court of Appeals for the Fourth Circuit is printed in the appendix hereto and also is reported in 230 F. 2d 139.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit sought to be reviewed was entered on February 13, 1956. Extension of time to file this petition up to and including July 12th, 1956, was granted by order of this Court dated May 11th, 1956.

This cause has been brought by petition of the United States of America for limitation of or exoneration from liability under Sec. 183b of Title 46 U. S. C. and is within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

The jurisdiction of this Court to review by Writ of Certiorari the judgment complained of is conferred by 28 U. S. C. Secs 1254(1) and 2101(c).

QUESTIONS PRESENTED

I. Is there any duty on the part of the navigator to use radar when he mistakenly believes that there is adequate visibility?

II. After failing to use radar may a vessel be exonerated when she fails to stop her engines immediately on hearing a fog signal forward of her beam?

STATUTES INVOLVED

Articles 16 and 29 of the regulations for preventing collisions at sea in effect at the time of the collision here in-

volved (33 U. S. C., 1946 Ed., §§92, 121), are as follows:*

"§92. Speed in fog, etc. (article 16).

"Every vessel shall, in a fog, mist, falling snow, or heavy rainstorms, go at a moderate speed, having careful regard to the existing circumstances and conditions.

"A steam vessel hearing, apparently forward of her beam, the fog signal of a vessel the position of which is not ascertained shall, so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over. (Aug. 19, 1890, ch. 802, §1, 26 Stat. 326.)"

"§121. Additional precautions required generally (Article 29).

"Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case. (Aug. 19, 1890, ch. 802, §1, 26 Stat. 328.)"

STATEMENT OF THE CASE

Petitioners were all passengers on the British cross-channel ferry *Duke of York* which makes a regular overnight run between England and Holland. At the time of this collision, this vessel was proceeding from the Hook of Holland to Harwich just north of London, England.

After travelling through intermittent fog and drizzle during the night of May 6, 1953, the *Duke of York* was about

*Effective January 1, 1954 these regulations were replaced by Rules 16 and 29, 33 U. S. C. Secs. 145n, 147a. No material change was effected by this revision.

1½ miles from the Galloper Lightship off the coast of England when the lights of a vessel were seen on the port bow about one-quarter of a mile away.

At that time, the U.S.N.S. *Haiti Victory* was proceeding from Southampton to Bremerhaven on a regular run carrying troops and cargo. According to the testimony of her pilot and crew, she had proceeded up channel believing that the visibility was good. The radar was in operation but was turned on standby so that it could be placed in instant use by turning a switch. Just prior to the collision the radar was used to obtain a position off Galloper Lightship on the port hand but nothing else on the starboard hand was observed and the testimony shows that if the starboard side of the radar scope had been observed the *Duke of York* could have been seen and the collision avoided.

Shortly after this observation, a whistle was heard on the starboard bow. After peering forward from the starboard wing of the bridge and then going to the radar and observing a target, he went to the starboard wing of the bridge again and seeing nothing ordered the engines stopped. Shortly thereafter the *Duke of York* was sighted about a quarter of a mile away on the starboard bow but it was too late for any avoiding action and the vessels collided. The *Haiti Victory* penetrated the port side of the *Duke of York* nearly 35 feet with the result that the *Duke of York's* bow was severed and broke away. Petitioners include the representatives of five passengers on the *Duke of York* who were killed and as well as those who were injured. The remaining passengers are claiming for lost baggage and personal effects.

The United States of America, as owner of the U.S.N.S. *Haiti Victory*, filed a petition for limitation and/or exonera-

tion from liability under Sec. 183(b) of Title 46 U. S. C. in the District Court for the Eastern District of Virginia, Norfolk Division. Petitioners herein filed claims in accordance with said section. The British Ministry of Transport, as owner of the *Duke of York*, also filed its claim for damages. The petitioners herein thereupon filed petitions to serve cross-claims against the Ministry of Transport under Rule 56 of the Supreme Court Rules. The District Court denied these petitions but the Court of Appeals for the Fourth Circuit reversed this decision.

The District Court held that the *Haiti Victory* was without fault and this decision was affirmed by the Court of Appeals. It is to reverse this portion of the decision that this petition is submitted.

REASONS FOR ALLOWANCE OF THE WRIT

The Court of Appeals and District Court below found no fault on the part of the pilot for not using radar when he believed the visibility good even though this belief was incorrect. The vessel was exonerated from all liability even though the radar lookout was immediately available and could have prevented the collision if it had been used.

This conclusion was reached by the Courts below on the ground that the pilot did not know there was fog ahead and had no reason to believe there was fog ahead. This Court on the contrary has repeatedly held that a navigator makes a mistake of fact at his own peril if the means are available to correct his mistake.

I.

The decision of the Court below relaxes the high standards of care set by this Court to promote safety of life at sea.

Never before has a negligent mistake been justified if there were any reasonable means available to ascertain the truth. Even where a navigator makes an honest mistake, he should be condemned if he had the means to ascertain his mistake. Any other rule would weaken and cut away the long standing traditions of good seamanship required for the safety of all in the maritime industry. In the modern age of high speeds and larger and larger vessels, even stricter rules of good seamanship are required. Modern inventions designed to aid the navigator cannot be forgotten and brushed aside simply because the pilot mistakenly thinks they are not required.

As stated by Mr. Justice McLean in *Nelson* v. *Leland*, 63 U. S. 50, 55 (1860):

> "The Commander cannot lessen his responsibility by alleging his mistake. He is bound to make no mistake for it is his duty to stop his boat when he doubts, until he ascertains the facts."

Actually there was never any doubt in the master's mind that there was a light ahead. He simply stated he made a mistake and thought that a light which he saw was on the beach when it was on a barge which he struck and sank.

In *Pfister* v. *Greening*, 76 U. S. 510 (1870) a mistake on lights was also made by faulty visual observation. Mr. Justice Bradley, speaking for the Court at page 512, said:

> "Had the Mate been on the lookout, as an officer in command, with a light ahead, ought to have been, the difficulty would not have occurred."

In *The Oregon*, 158 U. S. 192 (1895), the pilot mistakenly thought that the anchor light of the *Clan Mackenzie* was a shore light at Coffin Rock. This Court speaking through

Mr. Justice Brown declared this mistake to be inexcusable because if adequate lookouts had been employed the mistake would never had been made. Simply by changing the word "light" to "visibility" the application of the principle is clear.

The three cases sighted above reveal the strict accountability to which this Court has held all navigators who have the safety of people and property in their hands. If additional lookouts were required, lookouts should be posted. Here the radar lookout could have been posted and the collision avoided. It is no excuse to say a mistake was made because the law of the sea does not permit mistakes where you could have corrected them.

In the case at bar the pilot was under the mistaken belief that the visibility was good in all directions. He stated that lights were visible on the English Coast along the port hand (T134). About 0400 a vessel was seen ahead which apparently came from Holland and which later passed down the port side (T136). The collision occurred at 0416 and at the time just prior to the collision the pilot testified at page 164 of the transcript:

"Q. Was anyone keeping a lookout on either wing of the bridge?

A. No, sir, not at that time. In the wing of the bridge? No.

Q. The only lookout you had was the one on the bow?

A. On the bow and I was a lookout and the second mate was a lookout.

Q. No one saw this ship.

A. No, sir.

Q. The only explanation you can give is the fact that it was in a fog bank?

A. Yes, sir.

Q. No one saw the fog bank?

A. No, sir. It was a smooth sea and a grey sky and there was no horizon anywhere although I had had ample evidence of clear visibility. I had looked at it. It was perfectly clear. *There was no horizon there.*" (Emphasis added)

On this state of the evidence the District Court and the Court of Appeals accepted the pilot's view that he did not know there was fog nor had he any reason to believe that there was fog in the vicinity.

It is petitioner's contention that such a mistake is inexcusable where a proper lookout by radar would, in a few seconds' time, have pierced the area where there was no horizon and determined certainly what the true facts were. In the words of Justice Brown in *The Oregon, supra,* "If adequate lookouts had been employed, the mistake would never have been made."

The importance of the use of radar in modern navigation has been stressed in numerous cases before the lower courts but has not been specifically before this Court. In the Second Circuit failure to make an adequate use of radar equipment was held to be in direct violation of Article 29 of the International Regulations for Preventing Collisions at Sea, *supra, United States* v. *The Australia Star*, 74 F. Supp. 145, *aff.* 172 F. 2d 472 (2nd Cir. 1949). Judge Rifkind in The District Court declared this principle at page 149:

"The fault of the Australia Star is that she chose to remain blind when she had the means to see.

Prudent navigation involves taking advantage of all the safety devices at hand. Insofar as it is the judicial

> function to fit scientific discoveries into the framework of laws not tailored to their measure, the function should be carried out with an eye to the general purposes of the law, and to desirable social ends." (Emphasis added)

A previous effort to fit new scientific discoveries into the framework of the law is illustrated by the Second Circuit in *The T. J. Hooper*, 60 F. 2d 737 (2nd Cir. 1932) when the question of marine radios was raised. The master of a coastwise tug was under the mistaken impression that the weather forecast was good and that it was safe to proceed from the Delaware Capes to New York. In fact, there was a storm forecast and if the tugs had listened to it they would have avoided the subsequent loss.

We do not contend that constant use of the radar is required as the evidence shows that excessive use will burn out one unit of the set having a relatively short life. However, on a vessel moving at 17 knots as the *Haiti Victory* was on a heavily traveled route where fog is a known hazard which occurs at unexpected times, vigilance of the highest order is required and periodic use of the radar at long range would have been prudent.

On the *Haiti Victory*, the pilot complacently looked ahead and thought the visibility was clear although he admits he saw no horizon. The range of visibility is just as important to the seaman as to the motorist on the road. Any mistake as to the extent of visibility can be fatal in either instance. As a result of the pilot's complacent reliance on his visual observation, the all-powerful aid to vision was forgotten. The Second Officer took his fix on Galloper Light vessel with the same nonchalance relying again on what he thought he saw. If we believe, as we must at this stage, that the Second Officer actually never saw the target on the starboard

side of the twelve-inch scope his negligence is still inexcusable.

II.

The Courts below have relaxed a fundamental navigational rule that a vessel must stop her engines immediately on hearing a fog whistle forward of her beam.

The second paragraph of Article 16 of the Regulations for Preventing Collisions at Sea provides as follows:

> "A steam vessel hearing, apparently forward of her beam, the fog signal of a vessel, the position of which is not ascertained shall, so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over. (26 Stat. 326)

On the contrary the pilot in this case wasted the time it took his vessel to proceed about 1700 feet or approximately one-third of a mile before stopping his engines. The burden was then on the offending vessel to show that this error not only did not but could not have caused the collision. Since the vessels were on crossing courses and finally sighted each other one-fourth of a mile apart, it is clear that if the engines had been stopped a minute before considerable speed could have been run off the vessel. The United States was not able to prove that the accident was unavoidable one minute before collision when the whistle was first heard.

The courts below have disregarded the clear and uncompromising rule of this Court and of the Courts of Appeal in the Second and Ninth Circuits. *Lie* v. *San Francisco & Portland SS Co.*, 243 U. S. 291; *Johnston-Warren Lines* v. *United States*, 196 F. 2d 689 (2nd Cir. 1952); *The Silver Palm*, 94 F. 2d 754 (9th Cir. 1938).

The Court of Appeals below does not give any specific reason for disregarding the rule but significantly cites *The Umbria*, 166 U. S. 404, which was decided in April 1897 some two months before Section 16 set forth above went into effect. At the time of *The Umbria*, the Court considered Article 18 of the Revised International Regulations of 1885 (23 Stat. at L. 438) to be applicable:

> "Art. 18: Every steamship, when approaching another ship so as to involve risk of collision, shall slacken her speed, or stop and reverse, if necessary."

It is, of course, clear that the present rule of Article 16 is much stricter than former Rule 18 discussed in *The Umbria*.

This Court in *Lie* v. *San Francisco SS Co.*, *supra*, after quoting Mr. Justice Brown in *The Umbria* states at page 297:

> "It is enough to say that this second paragraph is an addition to the former rule for preventing collisions at sea, which the International Conference recommended, after full discussion by the most intelligent seafaring men of many nations."

Further on, at page 298, on finding that the *Selja* had failed to stop on first hearing a whistle forward of the beam, Mr. Justice Clarke concluded:

> "Such a state of fact makes sharply applicable the conclusion of this court in The Pennsylvania, 19 Wall. 125, 22 L. ed. 148: 'But when, as in this case, a ship at the time of a collision is in actual violation of a statutory rule intended to prevent collisions, it is no more than a reasonable presumption that the fault, if not the sole cause, was at least a contributory cause of the disaster. In

such a case the burden rests upon the ship of showing, nor merely that her fault might not have been one of the causes or that it probably was not, but that it could not have been.' "

We do not contend that the facts in *Lie* v. *San Francisco SS Co., supra*, are identical to the case at bar because Lie as master proceeded at half speed and slow speed of three knots for nearly fifteen minutes after hearing a distant fog signal. On the other hand the pilot of the *Haiti Victory* was proceeding at 17 knots and continued at that speed for about one minute before stopping his engines. This was done in spite of the fact that he stated that he knew as soon as he heard the whistle that it had to be a fog signal (T152). He knew at that moment there was a fog bank ahead which he states he did not know about before. In spite of that he proceeded for about one-third of a mile before stopping his engines.

The Court of Appeals has relied on *The Umbria, supra*, which did not involve the strict modern statute as interpreted by this Court and many of the lower courts.

In *Johnston-Warren Lines* v. *United States*, 196 F. 2d 689 (2nd Cir. 1952), a delay of one minute was condemned and the vessel was only going six knots. In *The Silver Palm*, 94 F. 2d 754 (9th Cir. 1938), the delay was also one minute and the vessel was proceeding at 18 knots practically the same situation as the instant case.

The decision below is not consistent with the decisions of this Court or with the Court of Appeals for the Second and Ninth Circuits.

CONCLUSION

The decision below involves concepts as old as sailing itself, in the fog rules, as well as the new situations presented by radar. A firm stand is required to prevent any relaxing of fundamental rules of good seamanship. It is accordingly urged that a writ of certiorari to review the decree of the Court below should be granted.

Respectfully submitted,

JOHN W. OAST, JR.
Citizens Bank Building
Norfolk, Virginia

WILBUR E. DOW, JR.
70 Pine Street
New York, New York

LEON SEAWELL, JR.
Norfolk, Virginia

BARRON F. BLACK
Norfolk, Virginia

R. ARTHUR JETT
Norfolk, Virginia

C. LYDON HARRELL
Norfolk, Virginia

EARL W. WHITE
Norfolk, Virginia

Proctors for Petitioners

APPENDIX A

Memorandum by the Court

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
AT NORFOLK

Admiralty *7622*

In the Matter of the Petition of THE UNITED STATES OF AMERICA as Owner of the USNS HAITI VICTORY, for Exoneration from or Limitation of Liability

---

Just before dawn in the North Sea on May 6, 1953, the USNS Haiti Victory, headed for Bremerhaven, and the westbound S.S. Duke of York, an overnight ferry between the Hook of Holland and Harwich, England, collided. The Duke of York had just emerged from a fog, the Haiti Victory was running in clear weather. Minor damage was suffered by the Haiti Victory, but her stem so deeply knifed into the port side of the Duke of York, just forward of her bridge, that the entire bow of the latter fell off and sank. Several of her 437 passengers were killed, others injured, and a large number lost their personal baggage. As owner of the Haiti Victory, the United States of America has filed a petition for exoneration from or limitation of liability. The question is whether either or both vessels failed to observe the care and caution enjoined upon mariners, by seamanship and statute, for the prevention of collisions at sea.

Asking $1,500,000 for her damage, the British Transport Commission, operating the Duke of York in connection with the British railway system, has led in the effort of the claimants to lay responsibility for the accident to the Haiti Victory. Petitioner's right to limitation, as well as the limitation fund of $1,039,959.52, has been established without contest. Certain claimants sought, through impleading petitions, to assert and try in this proceeding the liability of the British Transport Commission to them; the attempts were rejected and the immunity of the Commission thereto in the present forum was sustained. Ascertainment of the quantum of damages has been deferred in each instance to the determination of liability.

The Duke of York, a twin-screw steam turbine oil burner, 339 feet in length, left the Hook of Holland bound for Harwich a few minutes after midnight May 5, 1953 (early morning of May 6). She had a maximum speed of 18-20 knots and the crossing was normally a matter of five hours. Her lane was slightly south of due west—W. ¼ S., 267° magnetic—and took her about a mile south of Galloper Lightship, located off the English coast some distance north of the Thames' mouth. The Hook and Harwich are nearly on the same parallel, a little below the 52nd N. The Duke was showing all required navigation lights—two steaming lights forward, masthead and mainmast, a stern light, and red and green side running lights. Her equipment included radar, but the instrument failed before the ship was twenty minutes out. In addition to her regular officer complement, she carried a Dutch pilot all the way across.

The Haiti Victory is a single-screw propeller, of the Victory ship type, 439 feet in length and equipped with radar. She took on a licensed British pilot at Dover just after 0117 British Summer Time, which was one hour ahead

of Greenwich Mean Time and is the time of the references herein. Up to Galloper Lightship her course was generally 022° at first, and then 024°, gyro. Passing on her port hand the South and East Goodwin Lightships enroute, she came abeam of Galloper at about 0414 BST. After an alteration of her course to 050° gyro, to go under the stern of a crossing vessel, when 1½ miles to the east of Galloper, the Haiti Victory settled on a firm course of 036° gyro. She was maintaining her maximum speed, 17-18 knots, and was showing all requisite lights.

The Haiti Victory's first notice of the Duke's presence was the latter's fog whistle just after 0414 hours. It was caught by the Haiti Victory's forward lookout, and immediately reported to the bridge, as being off the starboard bow. Her pilot had heard it too. Instantly he passed to the starboard door of the wheelhouse, scanned the darkness from bow to beam, saw nothing and went directly to the radar. It disclosed a target on his starboard bow. Going again to the starboard wing of the bridge and again seeing nothing, he at once stopped his engines—0415 hours. Within a moment the red light of the Duke appeared on his starboard bow but ½ mile off; thereupon the Haiti's rudder was put Hard Right, her engines Full Astern, and her whistle given a short blast. At 0416 the ships were together.

Aboard the Duke, the captain heard a whistle four or five points on her port bow—the blast of the Haiti as she went Right Rudder and Full Astern. About the same time his forecastle-head lookout shouted his observation of the Haiti's masthead light, as well as her green light, ¼ mile away, about 6 points on the port bow. While taking a "fix" from the Decca dials in the wheelhouse, the Duke's second mate heard the lookout's call, and running out on the port wing picked out the Haiti's green light with his binoculars.

his radar being inoperable. At once the master put the Duke's engines on Slow, manually sounded a prolonged blast on her whistle, and followed it with Full Astern and 3 short blasts. Collision ensued.

The collision was two miles east of Galloper. The prow of the Haiti Victory penetrated the port bow of the Duke of York on the foreside of her bridge. The Haiti Victory puts the time at 0416, the York at 0418 hours. No fault is found in the engine or wheel movements of either vessel after they became aware of each other. Agony of collision was upon them and avoidance was then impossible. Existence or absence of earlier fault becomes a question of whether for the weather then prevailing the conduct of either vessel constituted negligence in navigation; therefore, the primary and crucial inquiry is what was the weather as known, or as it ought to have been known, to the two navigators.

A meteorological cold front was moving over the North Sea, from northeast to southwest, on the very early morning of the collision, May 6, 1953. It seemed to be pivoting on a point to the north of the east coast of England. By illustration, at midnight, GMT, along the English coast the weather was favorable, and was as favorable along the European coast as far north as the Hook of Holland; from midnight until 4 o'clock A.M.BST it moved southwardly 60 miles along the Dutch coast, but only 20 to 30 miles along the English shore. As a "weak" front it included only drizzle, overcast and fog with very poor visibility. At 4 o'clock BST it was still 60 miles northeast of Galloper, but twice as far down the European coast as on the opposite coast. From 4 o'clock until 7, it was almost stationary on the English side, leaving fair visibility there, but the night was dark. In and around Galloper the weather at 0300 hours was "cloudy with wet dew", meaning on Galloper's log legend that the

moon or stars would be visible at times. Fog signals were not commenced by Galloper until 0445 (the collision was at 0416 or 0418) and not until 0600 was it overcast and misty at Galloper. "Misty * * * is not quite as thick as [fog] but enough to cause objects to be indistinct and to require the fog signal to be sounded." The frequency of the fog and the low visibility increased from Galloper toward the Dutch coast.

From the time the Duke left the gas buoy, the first sea point, off the Hook of Holland, she met fog. As early as 12:45 A. M., less than an hour after leaving the docking pier, her captain was called to the bridge on account of the fog. At Noord Hinder Lightship, off the Dutch coast and 9 miles south of the Duke's track, the log records, the weather as foggy from one A. M. to five. The Duke was running through a "patchy" fog—"very thick at times" and then fairly clear intervals. She was piercing one fog bank after another. Fog signals from the vessel's steam whistle were sounded continually. From 3 A. M. on, the fog was "very thick." This is the testimony of the Duke's crew. The fog pocket she transited immediately before the collision was apparently the westernmost in her course.

In such weather the speed of the Duke of York was too fast for good seamanship; it violated the "moderate speed" injunction in the fog rules of Article 16, International Rules, 33 USCA 145m. It was an overriding and major fault; collision was a foreseeable result. Enveloped repeatedly throughout her passage in a fog that severely cut visibility, and rendered her invisible, she nevertheless assumed and kept to her clear weather speed—she reached Galloper at her regularly scheduled hour. When on the bridge at 12:45 A. M., the captain reduced the engines to Half Speed, 12 knots, but within a few minutes he put them back on Full Speed, 18 knots, and returned to his cabin, evidently satisfied

with the visibility. Never was visibility greater than 1 or 2 miles. From 0053 until 0325 hours her engines were at Full Speed Ahead. Twenty-four miles east of Galloper, 0325, visibility was shorter than a mile; by 0412, six minutes before the collision, it was less than half a mile; but during this period, save for a minute, her speed was 16 knots, Standby Full Ahead. At 0412 and up to the collision, visibility was ¼ mile, the captain, his mate and lookout have said, and even in this interval the speed was 12 knots, Half Ahead. Not until the Haiti Victory was sighted, the ships ¼ mile apart, and the collision a minute or two off, did the engines go to Slow, 6 knots.

Obviously, too, the Duke was not conforming to the authoritative interpretation of Article 16—that speed in a fog shall not exceed a rate that would allow her, with the assistance of her engines, to come to a standstill before she would collide with another vessel that she should see. The Laurence, 1893, 4 cir. 54 F. 542, 544; The Silver Palm, 1937, 9 cir. 94 F. 2d 754, 757; Griffin on Collision, p. 292 et seq.; The Fjell, 1919, E.D. Va. 257 F. 478, 480, opinion by Judge Waddill. Indeed, she could not stop in time to allow the bow watch to get below to warn his companions. That 12 knots in a fog of ¼ mile visibility is in fact an immoderate speed seems manifest; that it is so in law is well precedented. Griffin on Collisions, p. 301, footnote 1.

As to fault in the Haiti Victory, decision depends on whether she knew or ought to have known that she was running into or alongside a fog bank. If she had such knowledge, actual or attributable, and if the fog rules bind a vessel approaching or running alongside a fog, she was at fault; for she was proceeding at full speed, 17-18 knots, and was taking no fog precautions. But the Court finds that she was neither in a fog nor chargeable with notice of the nearby fog patch. It cannot be successfully argued that, with the

Duke so near, the Haiti Victory must necessarily have been aware of the fog enshrouding the Duke. The evidence denies any such deduction. The fog cloaking the Duke hid her as effectively as it hindered her; and all the while remained imperceptible to the outsider.

As the Haiti left Dover, visibility was excellent, so clear that the radar was soon switched off. Lights were distinct on both sides of the Channel, ahead and astern. One vessel was overtaken on the way, readily discernible. At 0400, Galloper was easily picked up one point on the port bow. Just before the Haiti came abeam of Galloper, still another vessel was seen, running from Goeree Lightship, on the Holland coast and a little south of the Hook, to Harwich. The Haiti Victory altered her course to 050° to give way to the crossing vessel, went around her stern, and resumed her plotted course on 036°. The crossing vessel, as indicated, came from the east, the very direction from which the Duke was coming. She was plainly seen when as much as 4 or 5 miles eastward. This was at 0414 hours—2 minutes before the collision. A trawler a mile and a half north of the Duke, and on a parallel course, showed no consciousness of any fog. As we have seen, even Galloper did not find it advisable to issue fog signals until 0445, and then it did so not for fog, only for "Cloudy Wet dew." Signs of fog were not seen by the Haiti Victory until after the Duke revealed herself. They were not overlooked; they were not there.

To charge the Haiti Victory with knowledge of the proximity of fog, the Duke called to the stand the mate of the S.S. American, a ship following the Haiti Victory up the North Sea. Her course was 034° True. Departing Dover seventeen minutes after the Haiti Victory, the mate said he was able at 0425 to see, 8½ miles on his "port head," the Kentish Knock Light located on the English coast; he stated the visibility was 10 miles. His log contains no entry of bad

weather between 0236 and 0441. His notation of fog at 0441 corresponds to Galloper's log of fog signals at 0445; but American's record reveals that fog was only setting in at 0441, that not until then were her engines put on Standby, and only at 0450 was her speed reduced because of fog. He states he could not see Galloper until within ½ mile of it at 0506, but his log notes that the American came abeam of Galloper at 0508 with 3 miles visibility. Hence, he gives no proof of fog perception on the English coast as early as 0416 or 0418—collision times. When 1½ miles passed Galloper, 0512, he saw the Duke and the Haiti lying alongside each other fore and aft.

True, the Haiti Victory's master did not completely undress on turning in, staying ready for any call, including a fog alarm. He testified, too, of the frequency of fogs in the North Sea. But, all of this discloses precaution against fog, not suspicion of it. Of course, he knew that ships traversed the North Sea between the English and Dutch ports; but he had the right to assume that their presence would be announced through the signals, and would be accompanied by the seamanship, demanded by the laws of the sea. Admittedly, as to the westbound traffic he was the burdened vessel, they the privileged; but again their paramount rights presuppose their observance of the law. Failing in this, their priority is forfeited. Specifically, compliance with the fog rule was a prerequisite to assertion of the righthand vessel's crossing privileges.

Strenuous insistence of fault in the Haiti Victory is urged for her failure to make use of radar, particularly, when the Haiti Victory's mate had glanced into the radar at Galloper. The assertion is plausible but actually unsubstantial. After the Goeree-Harwich vessel had crossed and passed down the port side of the Haiti Victory, the second mate turned

on the radar. His purpose was to get his distance off Gallope. It was turned on just as the Haiti Victory was changing back from her passing course of 050° to the new course of 086°. He did not see the Duke on the PPI (planned position indicator) repeater scope, though probably there was a pip on the right half of the scope. But he was not looking for anything to starboard; he had no reason to go to the radar to search in any direction. His failure to see the Duke was not negligence, for it was not the result of neglect of an obligation. No obscurity obligated him to use his radar, and there was nothing else to put him on notice of any need for it.

At this point it is well to refer to the Duke's radar. Its use would have avoided the collision and its unavailableness was due to neglect of repair. There was ample warning—a day or two—of its disrepair. Had it been in operation, the situation so urgently demanding its services, omission to use it would clearly have been negligence. However, as the Duke of York's excessive speed was the predominant fault leading to the collision, it is not necessary in this case to pass upon the question of whether or not, in the absence of statute requiring radar, a lack of diligence in maintaining existing radar facilities is negligence.

This memorandum is adopted by the Court as its findings of fact and conclusions of law. Within 10 days proctors for the United States will present a decree in accordance therewith, exonerating the petitioner, after submitting copies to the claimants' proctors for consideration as to form.

(Sgd.) ALBERT V. BRYAN
United States District Judge

Alexandria, Virginia.
May 5th, 1955.

APPENDIX B

Decision of Court of Appeals for the Fourth Circuit

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 7102

BRITISH TRANSPORT COMMISSION,
et al.,
Appellants,
versus
UNITED STATES OF AMERICA, as owner of the USNS "Haiti Victory," petitioning for exoneration from or limitation of liability in a cause of limitation of liability, civil and maritime,
Appellee.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT NORFOLK.
IN ADMIRALTY.

(Argued January 7, 1956. Decided February 13, 1956.)

Before PARKER, Chief Judge, and SOPER and DOBIE, Circuit Judges.

DOBIE, Circuit Judge:

On May 6, 1953, in the very early morning, a collision occurred in the North Sea between the overnight ferry DUKE OF YORK (hereinafter called the DUKE) owned by the British Transport Commission (hereinafter called

the Commission), and the transport HAITI VICTORY (hereinafter called the HAITI), owned by the United States. Terrific damage was done to the DUKE, several persons on the DUKE were killed, others were injured and many suffered property damage. The HAITI suffered only minor damages to her bow, amounting to some $60,040.48.

A petition was filed in the United States District Court for the Eastern District of Virginia by the United States, as owner of the HAITI, seeking exoneration from and/or limitation of liability for all losses and damages resulting from the collision. The Commission filed in these proceedings a claim of $1,500,000 for the losses and damages sustained by the DUKE. Numerous death, personal injury and baggage claimants also filed claims in the limitation proceedings, in varying amounts.

Some of the other claimants also filed petitions in the limitation proceedings, seeking to implead the Commission therein under General Admiralty Rule 56. In an unreported memorandum, the District Court held that the other claimants could not implead the Commission, for the reason that a limitation proceeding does not provide a forum for the adjudication of the liability of co-claimants to each other. Accordingly, an order was entered in the District Court dismissing the impleading petitions of these other claimants.

The limitation proceedings were tried in the District Court before Judge Albert V. Bryan. At the trial the right of petitioner, United States, to limit its liability, as well as the limitation fund of $1,039,959.52, was established without contest.

Thereafter, Judge Bryan filed his opinion, (131 F. Supp. 712) in which he held that the DUKE was solely to blame for the collision. The final decree exonerating the HAITI was filed in accordance with this opinion.

The Commission, and the other claimants, have filed appeals rom the final decree exonerating the HAITI. The other claimants have also appealed from the order dismissing their petitions to implead the Commission in the goverment's limitation proceedings.

Two questions are before us on this appeal: (1) Did the District Court commit error in exonerating the HAITI and holding the DUKE solely to blame for the collision; and (2) Did the District Court commit error in dismissing the petitions of the other claimants to implead the Commission in thelimitation proceedings instituted by the United States seeking exoneration from, and/or limitation of liability for, lossesand damages resulting from the collision.

The fault of the DUKE seems quite clear and is not seriously contested. She had left the Hook of Holland bound Westfor Harwich, England. We quote from the opinion of the District Judge, which finds ample support in the record, (131F. Supp. 712, 715):

> "The DUKE was running through a 'patchy fog'—very thick at times' and then fairly clear intervals. She was piercing one fog bank after another. * * * From 3 A. M. on, the fog was 'very thick.' * * * In such weather the speed of the DUKE OF YORK was too fast for good seamanship; it violated the 'moderate speed' injunction in the fog rules of Article 16, International Rules, 33 USCA § 145n. It was an overriding and major fault; collision was a foreseeable result. * * * At 0412 and up to the collision, visibility was ¼ mile, the captain, his mate and lookout have said, and even in this interval the speed was 12 knots, Half Ahead. Not until the HAITI VICTORY was sighted, the ships ¼ mile apart, and the collision a minute or two off, did the engines go to Slow, 6 knots."

Had the weather been clear and the visibility good all around, under the Starboard Hand Rule, the DUKE would have been the privileged, the HAITI the burdened, vessel. This rule, though, did not apply here by virtue of the fog surrounding the DUKE.

This brings us to the District Court's exoneration of the HAITI, a discussion involving at least three points: (a) Actual or constructive knowledge on the part of the HAITI that she was running into, or alongside, a fog bank; (2) The conduct of the HAITI after the HAITI heard the whistle of the DUKE; (3) The negligent use, or failure to use its radar by the HAITI. A careful study of the record convinces us that we cannot reverse the District Court's exoneration of the HAITI.

Visibility was excellent as the HAITI, with a Trinity House pilot, left Dover, bound for Bremerhaven, Germany. Lights were distinct on both sides of the English Channel. Around 0400 Galloper Lightship was easily picked up by the HAITI, about one point on the port bow. A very short while before the HAITI came abeam of Galloper, a crossing vessel was seen by the HAITI, about 4 miles away. The HAITI altered her course to 050°, went around this vessel's stern and then resumed her plotted course of 036°. This happened about 0414, approximately 3 minutes before the collision, and this crossing vessel came from the East, the direction from which the Duke was coming.

A trawler, about 1½ miles North of the DUKE, and on a course practically parallel to the DUKE, gave nothing to indicate the presence of fog. Galloper gave no fog signals until 0445, and then signalled only "Cloudy wet dew." The collision occurred about two miles East of Galloper. The mate of the S. S. AMERICAN, which left Dover 17 minutes after the HAITI, testified that his log contained no notation of fog until 0441.

Confirmatory testimony to the effect that there was no fog and no signs of impaired visibility apparent to those on the HAITI was given by her bow lookout, her helmsman and her mate. We must, therefore, affirm the holding of the District Court that the HAITI never knew, nor should have known, of the fog which enveloped the DUKE.

This brings us to the conduct of the HAITI just prior to the collision. The first notice those on the HAITI had of the presence of the DUKE was a single blast whistle from the DUKE. The bow lookout of the HAITI promptly reported to the bridge by telephone that he had heard what he thought was a ship's whistle off the HAITI's starboard bow. This whistle was also heard by the helmsman and pilot of the HAITI. The time, then, was apparently about 0414.

The pilot dashed out on the starboard side of the wheelhouse, looked around, saw nothing and went to the radar which disclosed an echo off the starboard bow. He again went out, saw nothing and stopped the engines, around 0415. Those on the HAITI thought the single blast they heard was a fog signal, but they were not sure of this.

Apparently in about a minute, the HAITI pilot saw the DUKE crossing from starboard to port, gave the order hard right, blew one short blast and went full speed astern. The full speed astern was logged on the HAITI at 0415-½, the collision at 0416. The HAITI changed course from 036° to 079° before striking the DUKE. The pilot of the HAITI testified that when he first saw the DUKE looming out of the fog, there was nothing that could be done by the HAITI beyond the hard right and full speed astern. A survey of the deformation of the plates, which is the resultant of the velocities of the ships, showed the speed of the DUKE, at the moment of impact, to be from 2 to 4 times the speed of the HAITI.

Under these facts, we must affirm the holding of the District Court exonerating the HAITI from blame in its conduct just before the collision. This includes the contention of the DUKE that the HAITI violated Rule 16 (33 USCA §92):

"* * *

A steam vessel hearing, apparently forward of her beam, the fog signal of a vessel the position of which is not ascertained, shall, so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over."

See, THE UMBRIA, 166 U. S. 404; *Johnston-Warren Lines* v. *United States*, 196 F. (2d) 689; *Steffens* v. *United States*, 32 F. (2d) 206; THE ANNA M. FAHY, 153 Fed. 866.

This brings us to the radar question. Since the visibility was good, the radar on the HAITI was switched off to standby about two hours after the pilot boarded the HAITI. At standby, no images are visible on the radar screen, but the radar is kept heated and, as the pilot testified, "When you do switch it, it comes on immediately." It was proved that the delicate cavity magnetron of the HAITI radar has a short life, so that the actual use of the radar must be carefully rationed.

Counsel for the DUKE make much of the failure of those on the HAITI to observe the DUKE when, for purely navigational purposes, the radar was switched on as the HAITI neared Galloper and the HAITI mate failed to find the DUKE on the radar screen. On this point, we quote from the opinion of the District Judge, (131 F. Supp. 712, 717):

"Strenuous insistence of fault in the Haiti Victory

is urged for her failure to make use of radar, particularly, when the Haiti Victory's mate had glanced into the radar at Galloper. The assertion is plausible but actually unsubstantial. After the Goeree-Harwich vessel had crossed and passed down the port side of the Haiti Victory, the second mate turned on the radar. His purpose was to get his distance off Galloper. It was turned on just as the Haiti Victory was changing back from her passing course of 050° to the new course of 036°. He did not see the Duke on the PPI (planned position indicator) repeater scope, though probably there was a pip on the right half of the scope. But he was not looking for anything to starboard; he had no reason to go to the radar to search in any direction. His failure to see the Duke was not negligence, for it was not the result of neglect of an obligation. No obscurity obligated him to use his radar, and there was nothing else to put him on notice of any need for it."

With this, we must concur. See, THE SOUTHPORT, 82 Ll. L. Rep. 862; *United States* v. *THE AUSTRALIA STAR*, 172 F. (2d) 472, 476, cert. denied 338 U. S. 823; *Wood* v. *United States*, 125 F. Supp. 42, 51; *Pocahontas Steamship Co.* v. *THE ESSO ARUBA*, 94 F. Supp. 486, aff'd. 197 F. (2d) 422; *Anglo-Saxon Petroleum Co.* v. *United States*, 88 F. Supp. 158; Wylie, Use of Radar at Sea (Institute of Navigation, London, 1953).

As to the defective radar on the DUKE, the District Judge observed, (131 F. Supp. 712, 717):

> "At this point it is well to refer to the Duke's radar. Its use would have avoided the collision and its unavailableness was due to neglect of repair. There was ample warning—a day or two—of its disrepair. Had

it been in operation, the situation so urgently demanding its services, omission to use it would clearly have been negligence. However, as the Duke of York's excessive speed was the predominant fault leading to the collision, it is not necessary in this case to pass upon the question of whether or not, in the absence of statute requiring radar, a lack of diligence in maintaining existing radar facilities is negligence."

This brings us to the second question before us on this appeal: Did the District Court err in denying the petitions of various claimants to implead the co-claimant, British Transport Commission. This right of impleader is sought under the 56th. Admiralty Rule:

"In any suit, whether in rem or in personam, the claimant or respondent (as the case may be) shall be entitled to bring in any other vessel or person (individual or corporation) who may be partly or wholly liable either to the libellant or to such claimant or respondent by way of remedy over, contribution or otherwise, growing out of the same matter. This shall be done by petition, on oath, presented before or at the time of answering the libel, or at any later time during the progress of the cause that the court may allow. Such petition shall contain suitable allegations showing such liability, and the particulars thereof, and that such other vessel, or person ought to be proceeded against in the same suit for such damage, and shall pray that process be issued against such vessel or person to that end. Thereupon such process shall issue, and if duly served, such suit shall proceed as if such vessel or person had been originally proceeded against; the other

parties in the suit shall answer the petition; the claimant of such vessel or such new party shall answer the libel; and such further proceedings shall be had and decree rendered by the court in the suit as to law and justice shall appertain. But every such petitioner shall, upon filing his petition, give a stipulation, with sufficient sureties, or an approved corporate surety, to pay the libellant and to any claimant or any new party brought in by virtue of such process, all such costs, damages and expenses as shall be awarded against the petitioner by the court on the final decree, whether rendered in the original or appellate court; and any such claimant or new party shall give the same bonds or stipulations which are required in the like cases from parties brought in under process issued on the prayer of a libellant."

The District Judge stated:

"The impleading petitions cannot be allowed. While the limitation of liability statute, as executed by Admiralty Rules 51-54, has been authoritatively interpreted as offering a forum for the complete adjudication and recovery of all claims, the reference is to claims and remedies against the petitioner only. * * *

To permit one claimant to prosecute another claimant in the limitation litigation would be unfair. The latter has intervened under compulsion, the court enjoining his resort to any other tribunal. Therefore, his responsibility should not be enlarged beyond that incident to his claim. Obedience to the injunction should not expose him to an attack to which, in regular course, he would be subject only in the jurisdiction of his residence or other place of voluntary entrance."

In his opinion, the District Judge cited, with the admission that none of these cases was precisely in point, *Just* v. *Chambers*, 312 U. S. 383, 386; *Hartford Accident Co.* v. *Southern Pacific Co.*, 273 U. S. 207; *Department of Highways* v. *Jahncke Service, Inc.*, 174 F. (2d) 894; THE CLIO-THE SPRINGHILL, 1948 A. M. C. 75.

This appears to be a question of first impression. While there have been cases involving the right of a petitioner in a limitation of liability proceeding to implead a claimant therein and the right of a claimant or a petitioner to bring in a third party, there have been no cases that involve the precise issue here involved: Whether one co-claimant in a limitation of liability proceeding can implead another co-claimant under the provisions of the 56th. Admiralty Rule.

We advert briefly to the cases cited in the District Judge's opinion. In The Hartford Accident and Just cases, *supra*, the Supreme Court held that when the jurisdiction of the court of admiralty has attached through a petition for limitation, the jurisdiction to determine liability is not lost merely because the shipowner fails to establish his right of limitation, and the claimants will be furnished a complete remedy by distribution of the *res* and by judgments *in personam* for deficiencies against the owner. In the Department of Highways case, *supra*, the impleading petition was denied, but, in that case, it was a third party that was sought to be impleaded rather than a co-claimant which was before the court and thus subject to the court's jurisdiction, as is the Commission in the instant case. In the CLIO-SPRINGHILL case, *supra*, the impleading petition was granted, but the party seeking the impleading petition was the petitioner in the limitation of liability proceeding.

Though the question is close and not free from difficulty, we think the District Court erred in denying these implead-

ing petitions, which should have been granted. While a hardship might thereby be suffered by the Commission, it would be an even greater hardship on the other claimants if they were left to enforce their rights by independent proceedings. Here we have many claimants from many parts of the world, who have filed their claims in the limitation proceedings instituted by the United States. All of the evidence concerning the collision involved herein has been presented both by petitioner and the claimant, British Transport Commission. The merits of the case have been adjudicated and it would work an undue hardship on all of the claimants herein not to have their rights against the British Transport Commission settled at this time. To hold otherwise would mean that the various claimants would have to pursue their causes of action against the Commission in another forum at great expense and at a time when perhaps much of the evidence necessary to support their claims would have been lost due to the lapse of time.

As a practical matter as well as an equitable one, the claimants herein should be allowed to implead the Commission. The Court (United States Court of Appeals, Second Circuit) in *Algoma Central & Hudson Bay Ry. Co.* v. *Great Lakes Transit Corporation*, 86 F. (2d) 708, stated that a determination in a limitation of liability proceeding will be *res adjudicata*. This position is also supported by THE ADAH, 258 Fed. 377, wherein the same court stated that all parties to a proceeding for limitation of liability who appear voluntarily or otherwise and join issues with the petitioners and between themselves are bound by the decree. Thus, if the issue of liability in the instant case is *res adjudicata* and all the parties herein bound thereby, then the District Court should also decide the issue of damages as between all the parties before it and this could only be ac-

complished by the allowance of an impleading petition under the 56th. Admiralty Rule.

It has often been said that admiralty courts sit as courts of equity. Certainly wide acclaim has been lavished on the delight of equity in doing complete justice to all the parties before it and here the Commission was before the court. This view was admirably stated by Chief Justice Taft in the Hartford Accident case, 273 U. S. 207, 215-216:

> "It is quite evident from these cases that this court has by its rules and decisions given the statute a very broad and equitable construction for the purpose of carrying out its purpose, and for facilitating a settlement of the whole controversy over such losses as are comprehended within it, and that all the ease with which rights can be adjusted in equity is intended to be given to the proceeding. It is the administration of equity in an admiralty court. * * * The proceeding partakes in a way of the features of a bill to enjoin the multiplicity of suits, a bill in the nature of an interpleader, and a creditor's bill. It looks to a complete and just disposition of a many-cornered controversy."

This equitable principle was stated and applied by the Supreme Court in the case of *Alexander* v. *Hillman*, 296 U. S. 222, which was an equity suit brought by receivers of a corporation for the purpose of winding up the affairs of the company and the disposition of its assets. Certain officers of the corporation, who were not served with process, appeared as respondents and presented their claims. The receiver of the company then filed various counter-claims against the officer-respondents and prayed for affirmative relief against them. This affirmative relief was allowed. Said Mr. Justice Butler, 296 U. S. 222, 239, 241-242:

> "Treating their established forms as flexible, courts of equity may suit proceedings and remedies to the circumstances of cases and formulate them appropriately to safeguard, conveniently to adjudge and promptly to enforce substantial rights of all the parties before them.
>
> * * *
>
> Respondents' contention means that, while invoking the court's jurisdiction to establish their right to participate in the distribution, they may deny its power to require them to account for what they misappropriated. In behalf of creditors and stockholders, the receivers reasonably may insist that, before taking aught, respondents may by the receivership court be required to make restitution. That requirement is in harmony with the rule generally followed by courts of equity that having jurisdiction of the parties to controversies brought before them, they will decide all matters in dispute and decree complete relief."

The directors were required, at the risk of forfeiting their rights, to comply with the invitation and order of court and present their claims in the receivership proceeding.

See, also, the opinion of Circuit Judge Parker, (citing *Alexander* v. *Hillman*) speaking for our Court in *Florance* v. *Kresge*, 93 F. (2d) 786.

It is contended by counsel for the DUKE that limitation proceedings in admiralty are distinctive and statutory, that they are *sui generis* and quite unlike suits in equity or ordinary civil actions in admiralty. It is said they are neither proceedings *in rem* nor *in personam*. Accordingly, we are told, admiralty courts in such unique and peculiar proceedings should not apply the usual doctrines of equity or ad-

miralty. This technical contention leaves us rather cold. It does not wean us from the liberal view we have reached.

Modern codes of procedure have reflected two facets: (1) all rights, if this can fairly be done, should be decided in a single legal proceeding; (2) parties who submit themselves to the jurisdiction of a court in a legal proceeding should be bound by that court's decision on all questions, appropriate to and seasonably raised in, that proceeding. Those ideas, we think, can reasonably be deduced from the spirit, if not the letter, of the 56th. Admiralty Rule. Certainly that spirit finds support in the Federal Rules of Civil Procedure.

The decree of the District Court, in so far as it exonerates the HAITI and holds the DUKE solely responsible for the collision, is affirmed. That part of the decree which denies the impleading of the Commission by the other claimants in the limitation proceeding is reversed. And the case is remanded to the District Court for further proceedings in conformity with the opinion.

Affirmed in part; Reversed in part and Remanded.

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 249

ARTHUR GOODMAN, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (Pet. App. 1–9) is reported at 131 F. Supp. 712. The opinion of the Court of Appeals (Pet. App. 10–23) is reported at 230 F. 2d 139.

JURISDICTION

The judgment of the Court of Appeals was entered on February 13, 1956. On May 11, 1956, by order of the Chief Justice, the time for filing a petition for a writ of certiorari was extended to and including July 12, 1956. The petition for a writ of certiorari was filed on July 12, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

394850—56——1

QUESTION PRESENTED

Whether, in the circumstances of this case, both lower courts erred in finding that the United States, as owner of the U. S. N. S. *Haiti Victory*, was free from fault in a collision of the *Haiti Victory* with petitioner's vessel, *The Duke of York*.

STATUTES AND REGULATIONS INVOLVED

Articles 16 and 29 of the International Rules governing navigation are set forth at pages 2–3 of the petition.

STATEMENT

Petitioners are passenger claimants in limitation proceedings brought by the United States as owner of the U. S. N. S. *Haiti Victory* (hereafter called *Haiti*), seeking exoneration or limitation of liability resulting from a collision of the *Haiti* with the overnight ferry, *Duke of York* (hereafter called *Duke*). The petition seeks review of that portion of a judgment of the Court of Appeals affirming an order of the District Court exonerating the *Haiti* from all liability resulting from the collision. The circumstances surrounding the collision, which was found by both lower courts to be solely caused by the fault of the *Duke*, are set forth in the Government's brief in opposition to a petition filed by the *Duke's* owner in *British Transport Commission* v. *United States*, No. 247, as well as in the opinions of the Court of Appeals and District Court (Pet. App. 1–23), to which we respectfully refer.

ARGUMENT

The instant petition involves substantially the same issue as questions 2 and 3 (parts II and III) of the petition filed in *British Transport Commission* v. *United States, supra,* pages 24–46.

For the reasons stated at pages 5–9 of our brief in opposition to that petition, it is respectfully submitted that this petition likewise should be denied.

OSCAR H. DAVIS,
Acting Solicitor General.
GEORGE COCHRAN DOUB,
Assistant Attorney General.
SAMUEL D. SLADE,
WILLIAM W. ROSS,
Attorneys.

AUGUST 1956.

U. S. GOVERNMENT PRINTING OFFICE : 1956